

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.102 OF 2019
WITH ALP/104/2019 WITH ALP/105/2019**

**M/S. ABHIJEET EICHER THROUGH ITS PROPRIETOR USHADEVI
ASHOK KOTHARI
VERSUS
RAFIQUEKHA HASANKHA PATHAN**

Mr. S. H. Tripathi, Advocate for the applicant
Mr. D. P. Pande, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 4th AUGUST, 2023

P.C. :-

1. Heard.
2. These applications are for filing leave to appeal against the order of acquittal passed in Sum. Cri. Compt. Case No. 3042/2006 and 3040/2006 by judgment dated 25/02/2019 acquitting the accused/respondent for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'NI' Act).
3. Learned counsel for the applicant states that Trial Court has committed error in not appreciating the recitals of agreement dated 14/08/2005. He took this Court through the evidence recorded before the Trial Court and also reasons and findings recorded for the purpose of

acquittal of accused. It is his contention that there was error committed by the learned Trial Court in holding that there was admission on the part of the complainant about entire payment being made by Kotak Mahindra Bank. According to him this observation is contrary to the agreement which is admitted by both sides. It is submitted that the complainant has come out with a case the cheque in question were issued by the accused for the margin money of the tractors. On this amongst other submission the impugned order is sought to be assailed.

4. Learned counsel for the respondent/accused supported the order of acquittal by submitting that the complainant has candidly admitted in the cross examination that at the time of sale of the tractors entire amount was received from Kotak Mahindra Bank. He also drew attention of the Court to the admission to the effect that the sum of Rs. 3 lakhs was not paid by the complainant to the accused as per the agreement.

5. It is settled law that the accused is presume to be innocent till proved guilty. Here in this case the learned Trial Court after conducting full fledged trial has acquitted the accused. Thus presumption of the innocence of the accused gets strengthened. Hence unless it show by the complainant that the learned Trial Court has failed to take into

consideration the evidence on record or has misconstrued it, order of acquittal cannot be interfered with.

6. Perusal of the record indicates that this is case specific of the complainant that there was an agreement dated 14/08/2005 entered into between the parties at the time of sale of four tractors by the complainant to the accused. Though there was a sale of four tractors the agreement was in respect of three tractors. It is further case of the complainant that in view of the said agreement a sum of Rs. 3 lakhs was to be lent to the accused by way of hand loan. There is further no dispute about the fact that the complainant had obtained in all 14 cheques from the accused. In the light of these facts complainant sought to make out case of offence punishable under Section 138 of NI Act.

7. Perusal of the evidence led by the complainant herself clearly shows that there is admission to the effect that there was non compliance of the terms of the agreement. It is accepted that Rs. 3 lakhs as agreed in the agreement was never paid to the accused. Apart from this there is candid admission to the effect at the time of sale of these tractors the complainant had received entire money from Kotak Mahindra Bank. Having regard to these admissions elicited during cross-examination by the accused of the complainant, the accused must be

held to have has successfully rebutted the presumptions against the negotiable instrument, under Section 118 and 139 of NI Act. Having regard to evidence led before the Trial Court, no case can be said to have been made out by the applicant to allow filing appeal against the order of acquittal. Hence application is dismissed.

(R. M. JOSHI, J.)

ssp